

**RESOLUTION NO. 75359**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED TRUST AGREEMENT AND AUTHORIZING OTHER RELATED ACTIONS RELATING TO THE CITY OF SAN JOSE FINANCING AUTHORITY'S LEASE REVENUE COMMERCIAL PAPER NOTES PROGRAM IN ORDER TO ALLOW ISSUANCE OF COMMERCIAL PAPER NOTES TO FUND A LOAN TO THE LOW AND MODERATE INCOME HOUSING FUND AND TO FUND ADVANCES TO THE CITY IN THE EVENT THERE IS A NEED TO ADDRESS UNANTICIPATED OR SEASONAL CASH FLOW DEFICIENCIES**

**WHEREAS**, the City of San José (the "City") and the Redevelopment Agency of the City of San José (the "Agency") have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the "Authority") for the purpose, among others, of having the Authority issue its instruments of debt to finance the acquisition, construction and improvement of certain public capital improvements; and

**WHEREAS**, the Authority has heretofore determined to adopt and implement a commercial paper program under which the Authority will provide financing for certain public capital improvements for the City; and

**WHEREAS**, on January 28, 2004, pursuant to a Trust Agreement dated as of January 1, 2004 (the "Original Trust Agreement"), between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Act"), the Authority delivered its first issue of its not to exceed \$98,000,000 Tax-Exempt Lease Revenue Commercial Paper Notes (the "Tax-Exempt Commercial Paper Notes"); and

**WHEREAS**, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City entered into a Site Lease, dated as of January 1, 2004 (the "Site Lease"), pursuant to which the Authority leased from the City certain Property (as such term is defined therein) located in the City, including the buildings and improvements thereon owned by the City; and

**WHEREAS**, concurrently with the delivery of the first issue of the Tax-Exempt Commercial Paper Notes, the Authority and the City also entered into a Sublease, dated as of January 1, 2004 (the "Sublease"), pursuant to which the City subleased the Property from the Authority; and

**WHEREAS**, the payment of principal of and interest on the Commercial Paper Notes (as defined below) are secured by an irrevocable direct pay letter of credit (the "Credit Facility") issued severally, but not jointly, by State Street Bank and Trust Company and the California State Teachers' Retirement System (collectively, the "Banks") pursuant to the terms of a reimbursement agreement (as amended as provided below, the "Reimbursement Agreement") among the Authority, the City, the Banks and State Street Bank and Trust Company, as agent for the Banks; and

**WHEREAS**, on November 9, 2004, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of the Commercial Paper Notes to finance the installation and integration of computer software, software licensing, hardware and certain related costs related to the City's billing system previously referred to as the "Integrated Utility Billing, Customer Service and Performance Management System" (the "CUSP Project") and currently known as the "Utility Billing System Project"; and

**WHEREAS**, the City, in order to increase its flexibility with respect to a portion of the Projects (as defined in the Trust Agreement), requested that, pursuant to the Act, the Authority issue its City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (the "Taxable Commercial Paper Notes"); and

**WHEREAS**, in order to aid the City, the Authority determined to amend and restate the Original Trust Agreement and to amend certain related documents in order to provide for the issuance of its Taxable Commercial Paper Notes as well as its Tax-Exempt Commercial Paper Notes (collectively, the "Commercial Paper Notes"); and

**WHEREAS**, on June 23, 2005, the Authority and the Trustee entered into an Amended and Restated Trust Agreement (the "Amended and Restated Trust Agreement") in order to provide for the issuance of Taxable Commercial Paper Notes; and

**WHEREAS**, on November 17, 2005, the Authority and the Trustee entered into a First Supplement to Amended and Restated Trust Agreement (the "First Supplement") in order to increase the not-to-exceed maximum aggregate principal amount of Commercial Paper Notes from \$98,000,000 to \$116,000,000, and also to allow the additional use of the Commercial Paper Notes to finance the City's Central Service Yard Phase II Project and the demolition and clean up at the City's Main Service Yard; and

**WHEREAS**, on May 22, 2007, the Authority and the City adopted resolutions, after a duly held public hearing, approving using proceeds of Taxable Commercial Paper Notes to pay for the cost of improvements to the City-owned HP Pavilion and related costs; and

**WHEREAS**, on October 21, 2008, the City and the Authority adopted resolutions approving amending the Amended and Restated Trust Agreement pursuant to a Second Supplement to the Amended and Restated Trust Agreement (the "Second Supplement") in order to expand the Authority's ability to issue Commercial Paper Notes for the purpose of refunding bonds and other obligations of the City or the Authority pursuant to Government Code Sections 53570 et seq and 53580 et seq; and

**WHEREAS**, on December 8, 2009, the City and the Authority adopted resolutions approving Amendment No. 2 to Letter of Credit and Reimbursement Agreement (the "Second Amendment") extending the maturity date of the Credit Facility and amending certain provisions of the Reimbursement Agreement in connection with such extension; and

**WHEREAS**, the City and the Authority now desire to further amend the Amended and Restated Trust Agreement pursuant to a Third Supplement to the Amended and Restated Trust Agreement (the "Third Supplement" and, together with the Amended and Restated Trust Agreement, the First Supplement and the Second Supplement, the "Trust Agreement") in order to allow the Authority to issue Commercial Paper Notes for the purposes of (i) funding a loan to the Low and Moderate Income Housing Fund established under and pursuant to the Community

Redevelopment Law, which fund is administered by the City, and (ii) making working capital advances to the City in the event that there is a need to address unanticipated or seasonal cash flow deficiencies;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

**Section 1.** The City Council hereby approves the issuance of Commercial Paper Notes for the purpose of funding a loan to the Low and Moderate Income Housing Fund, in an amount not to exceed the amount specified in a loan agreement by and among the City, the Authority and the Agency, which loan agreement was authorized by the City Council, the Agency Board and the Authority Board at their joint meeting on February 23, 2010 and which loan agreement may be amended. The City Council also hereby approves the issuance of Commercial Paper Notes for the purpose of providing the Authority funds to make working capital advances to the City in order to allow the City to meet its cash flow needs in amounts not to exceed the amounts hereafter approved by the City Council and the Authority Board. The City Council hereby approves the Authority's and the Trustee's execution and delivery of the Third Supplement in the form posted to the agenda webpage for this joint meeting of the Authority and the City together with such additions thereto and changes therein as the City Manager or the Assistant Director of Finance or their authorized designees (collectively, the "Designated Officers"), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The City Council hereby approves the payment of the costs related to the execution and delivery of the Third Supplement and the other documents referenced in Section 2 below.

**Section 2.** The City Manager, the City Clerk, and any other officer of the City designated by the City Manager, are hereby authorized, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Commercial Paper Notes and the consummation of the transactions as described herein, including without limitation, such documents, assignments, certificates and agreements as may be required by the Trust Agreement, the Reimbursement Agreement, the Dealer Agreement or the Issuing and Paying Agent Agreement, the Sublease or the Site Lease (as such terms are defined in the Trust Agreement). Further, the City Manager, the City Clerk, and any other officer of the City designated by the City Manager, are each hereby authorized to execute a certificate as to arbitrage and other necessary certificates or forms to ensure the continued tax exempt status of the Tax-Exempt Commercial Paper Notes.

Any authority delegated under this Resolution to a specified official of the City may also be exercised by the specified official's authorized designee.

ADOPTED this 27th day of April, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE;  
REED.

NOES: NONE.

ABSENT: NONE.

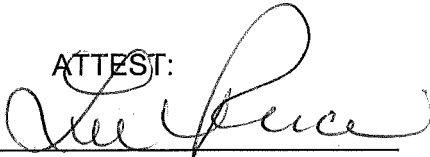
DISQUALIFIED: NONE.



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CHUCK REED  
Mayor

ATTEST:



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LEE PRICE, MMC  
City Clerk